



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2015-0444; FRL-9941-64-Region 4]

Air Plan Approval; KY; Emissions Statements

for the 2008 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the state implementation plan (SIP) revision submitted by the Commonwealth of Kentucky, through the Kentucky Division of Air Quality (DAQ) on November 18, 2015, to address the emissions statements requirement for the Cincinnati, Ohio-Kentucky-Indiana (Cincinnati, OH-KY-IN) 2008 8-hour ozone national ambient air quality standards (NAAQS) nonattainment area (hereafter referred to as the “Cincinnati, OH-KY-IN Area” or “Area”). Annual emissions reporting (i.e., emissions statements) is required for all ozone nonattainment areas. The Area is comprised of Butler, Clermont, Clinton, Hamilton and Warren Counties in Ohio; portions of Boone, Campbell, and Kenton Counties in Kentucky; and a portion of Dearborn County in Indiana. Any actions that EPA takes regarding the emissions statements requirements for the Ohio and Indiana portions of this Area will be addressed in separate rulemakings.

DATES: This rule is effective [insert 30 days after date of publication in the Federal

Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2015-0444. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section (formerly Regulatory Development Section), Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Bell can be reached at (404) 562-9088 and via electronic mail at bell.tiereny@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 15, 2015, the Commonwealth of Kentucky submitted a draft SIP revision to EPA for parallel processing seeking to include the specific sections of 401 Kentucky Administrative Regulations (KAR) 52.020 - *Title V permits*, 401 KAR 52:030 - *Federally-enforceable permits for non-major sources*, 401 KAR 52:040 - *State-Origin Permits*, and 401 KAR 52:070 - *Registration of designated sources* identified on pages 8 and 9 of its April 15, 2015 submittal into the SIP to meet the emissions statements requirements of CAA section 182(a)(3)(B).¹ In a notice of proposed rulemaking (NPR) published on September 22, 2015, EPA preliminarily determined that the specific regulatory sections identified on pages 8 and 9 of the draft SIP submission, collectively, meet the emissions statements requirements of section 182(a)(3)(B) because they require sources that emit 25 tons per year or more of volatile organic compounds (VOCs) or nitrogen oxides (NOx) within the Kentucky portion of the Area to submit annual certified statements showing actual VOC and NOx emissions. The specific regulatory sections that EPA is approving into the SIP through today's action are identified in Section II, below. Although the Commonwealth identified portions of 401 KAR 52:030 for inclusion in the SIP, EPA notes that the Agency approved those sections into Kentucky's SIP on September 6, 2006. *See* 71 FR 52460.

The details of Kentucky's submittal and the rationale for EPA's actions are explained in the NPR. Comments on the proposed rulemaking were due on or before October 22, 2015. No comments were received. On November 18, 2015, Kentucky submitted a final SIP revision that did not contain any substantive changes regarding emissions statements from the draft version

¹ Section 182(a)(3)(B) of the CAA requires each state with ozone nonattainment areas to submit a SIP revision requiring annual emissions statements to be submitted to the state by the owner or operator of each NOx or VOC stationary source located within a nonattainment area showing the actual emissions of NOx and VOC from that source. The first statement is due three years from the area's nonattainment designation, and subsequent statements are due at least annually thereafter.

submitted on April 15, 2015. EPA is now taking final action to approve the November 18, 2015, SIP revision as meeting the requirements of section 182(a)(3)(B) of the Clean Air Act (CAA or Act).

II. Incorporation By Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporate by reference of 401 KAR 52.020 - *Title V permits*, Section 22 entitled “*Annual Emissions Certification*”, first sentence only and Section 23 entitled “*Certification by Responsible Official*”, introductory paragraph text and subsection (4) only; 401 KAR 52:040 - *State-Origin Permits*, Section 3 entitled “*General Provisions*”, subsection (2) introductory text, subsection (2)(c), and subsection (3) only; Section 20 entitled “*Annual Emissions Certification for Specified Sources*”, subsection (1) only; and Section 21 entitled “*Certification by Responsible Official*”, introductory text and subsection (4) only; and 401 KAR 52:070 - *Registration of designated sources*, Section 3 entitled “*General Provisions*”, subsection (2) introductory text, subsection (2)(a)(1), and subsection (2)(a)(2) first sentence only. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the Region 4 EPA office (see the ADDRESSES section of this preamble for more information).

III. Final Action

EPA is approving the SIP revision submitted by Kentucky on November 18, 2015, as meeting the section 182(a)(3)(B) emissions statements requirement for the Kentucky portion of the Cincinnati, OH-KY-IN Area, and EPA is incorporating the regulatory text identified in

Section II, above, into Kentucky's SIP. EPA has concluded that the Commonwealth's submission meets the requirements of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after

it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 12, 2016.

Heather McTeer Toney

Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart (S) —Kentucky

2. In § 52.920, table 1 in paragraph (c) is amended under Chapter 52 Permits, Registrations, and Prohibitory Rules, by adding in numerical order entries for “401 KAR 52:020,” “401 KAR 52:040,” and “401 KAR 52:070” to read as follows:

§52.920 Identification of plan.

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(c) * * *

Table 1—EPA Approved Kentucky Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Chapter 52 Permits, Registrations, and Prohibitory Rules				
**	**	*	*	*
401 KAR 52:020	Title V permits	1/15/01	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	Only adding the first sentence of Section 22 entitled “ <i>Annual Emissions Certification</i> ”, and introductory paragraph text and subsection (4) of Section 23 entitled “ <i>Certification by Responsible Official</i> ”

** 401 KAR 52:040	** State-origin permits	* 1/15/01	* [Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	* Only adding subsection (2) introductory text, subsection (2)(c), and subsection (3) of Section 3 entitled “ <i>General Provisions</i> ”; subsection (1) of Section 20 entitled “ <i>Annual Emissions Certification for Specified Sources</i> ”; and introductory text and subsection (4) of Section 21 entitled “ <i>Certification by Responsible Official</i> ”
401 KAR 52:070	Registration of designated sources	1/15/01	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	Only adding subsection (2) introductory text, subsection (2)(a)(1), and first sentence of subsection (2)(a)(2) of Section 3 entitled “ <i>General Provisions</i> ”.
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[FR Doc. 2016-01567 Filed: 1/27/2016 8:45 am; Publication Date: 1/28/2016]